

**IN THE UNITED STATES DISTRICT COURT OF OHIO
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**Trustees of the Ohio Bricklayers
Pension Fund, et al., et al.,
Plaintiffs,**

**CASE NO. 1:07-cv-00923
(Beckwith, J.)
(Hogan, M.J.)**

-vs-

**Susan Atkinson d/b/a
Atkinson Masonry, et al.,
Defendants**

**REPORT AND
RECOMMENDATION**

Plaintiffs having moved for an order for a default judgment pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, and it appearing to this Court that (1) the Complaint in this action was filed against Defendants on or about the 1st day of November, 2007; (2) that the Summons and Complaint were duly served on Defendants by ordinary mail with a certificate of mailing on the 28th day of November 28, 2007 as to Susan Atkinson and Donald Atkinson after failure of service by certified mail; (3) no Answer or other defense has ever been filed by Defendants as shown by the records of this Court; (5) default has been entered in the civil docket in the office of the Clerk of this Court, and no proceedings have been taken by Defendants since said default was entered; (6) Defendants are not in the Military Service; and (7) Defendants are not an infant or incompetent person, it is hereby **RECOMMENDED THAT** judgment be entered against Defendants and for Plaintiffs as follows:

- 1) \$2,580.00, the known amount for fringe benefit contributions for October 2007 to the Ohio Bricklayers Pension Fund and the Ohio Bricklayers Health and Welfare Fund.
- (2) A known amount of \$1,827.44 for liquidated damages for late payments for the period of January 2007 through November 2007;
- (3) Order Defendants to make all of their books and records for the period of January

2005 through the present available for inspection upon the request of the Funds' auditor so that Plaintiffs may determine the amount of damages due them;

- (4) An amount to be determined by the payroll audit for delinquent fringe benefit contributions with interest in the amount of one and one-half percent (1.5%) per calendar month on the unpaid contributions and liquidated damages in the amount of ten percent (10%) of the unpaid contributions;
- (5) The amount of \$4,652.43 Plaintiffs' reasonable attorney fees and the costs of this action;
- (6) The cost of the payroll audit to be performed by the Fund's auditor; and
- (7) Any other relief this Court finds just and equitable

for a total of \$9,059.87. Interest shall accrue at the rate found in 28 U.S.C. § 1961 which is 2.98% per annum from the date of judgment.

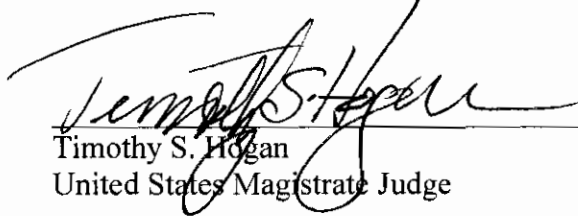
IT IS FURTHER RECOMMENDED THAT Defendants shall, within thirty days of receipt of the Order Affirming and Adopting this Report and Recommendation, fully cooperate with the Plaintiffs' auditor and make available for inspection at the Fund Office at Stoner & Associates, 205 W. Fourth Street, Suite 225, Cincinnati, OH 45202, all of their books and records and other information necessary for the completion of such an audit and for a calculation of delinquent fringe benefit contributions with interest in the amount of one and one-half percent (1.5%) per calendar month on the unpaid contributions and liquidated damages in the amount of ten percent (10%) of the unpaid contributions which are due and owing Plaintiffs for the period of January 2005 through the present. Defendants shall also cooperate with Plaintiffs in regards to whatever other discovery deemed necessary in this case to calculate any and all damages due and owing Plaintiffs.

IT IS FURTHER RECOMMENDED THAT, after Plaintiffs have completed their review of Defendants' books and records and whatever other discovery deemed necessary in this case, Plaintiffs will submit to this Court proof of their additional damages at which time, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure this Court will determine

whether to conduct a hearing before entering a judgment for additional damages against the Defendants.

Date:

3/31/08


Timothy S. Hogan
United States Magistrate Judge

NOTICE TO THE PARTIES REGARDING THE FILING
OF OBJECTIONS TO THIS R&R

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation ("R&R") within **FIFTEEN (15) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **TEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).